

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of : Robert G. Wilhelm, *et al.*
Application No. : 09/876,915
Filed : June 8, 2001
Patent No. : 7,787,696
Issue Date : August 31, 2010
For : Systems and Methods for Adaptive Sampling and
Estimating a Systematic Relationship Between a Plurality
of Points
Examiner : Gregory M. Desire
Art Unit : 2624
Atty. Docket : 2000-008-9/14

Mail Stop: Patent Ext.
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Petition Regarding Patent Term Adjustment (PTA)
Indicated in Issue Notification

Sir:

1. An Issue Notification was mailed on August 31, 2010, for the present application. The Issue Notification indicated that this application is entitled to a Patent Term Adjustment (PTA) of 2519 days. Applicants believe that the correct total PTA is 2542 days.

2. The determination of the total PTA of 2519 days is erroneous because the U.S. Patent & Trademark Office's (PTO) PTA calculator accounted for 23 days of applicant delay for a "Miscellaneous Incoming Letter" which was submitted with the payment of the Issue Fee on February 26, 2010. Applicants believe that this delay is in error, because it overlaps with a delay of 97 days, under 37 CFR § 1.704(c)(10), for submission of an amendment under 37 CFR § 1.312. The number of PTA credits of 2945 days for PTO delay under 35 USC § 154(b)(1)(A) and 37 CFR § 1.702(a)(1) that is shown on the PTA History (Exhibit A) is correct. But the correct number of PTA debits

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for Applicant delays is 403 days (276 + 97 + 30), and does not include 23 days of delay for the Miscellaneous Incoming Letter. Thus, the correct total PTA to date is 2542 days (i.e. 2945 days of PTA credit – 403 days of Applicant delay).

3. Thus, Applicant believes that the total PTA credit for PTO delay is 2945 days, the total PTA debit for applicant delay is 403 days, and the correct total PTA under 37 CFR § 1.703(f) is 2542 days.

4. This application for patent term adjustment is filed within two months of the Issue Date of the present application.

5. The following statements are required by 37 CFR § 1.705(b)(2)(i).

- i) The correct total PTA credit is 2945 days.
- ii) The basis for the 2322 days of PTA credit is under § 1.702(a)(1) and is due to the PTO's failure to mail a notification under 35 USC § 132 or a notice of allowance within 14 months of the application's filing date, and the PTO's failure to respond to a reply under 35 USC 132 no later than four months after the date on which the reply was filed. The basis for the 2275 days of PTA credit is under § 1.702(b) and is due to the PTO's failure to issue a patent within three years of the filing date.

- iii) The basis for the 403 days of PTA debit under § 1.704(b) is due to the Applicant's failure to reply to actions by the PTO within three months after the date on which the action was mailed, and the Applicant's failure to file a petition to withdraw the holding of abandonment within two months after the date on which the Notice of Abandonment was mailed.
 - iv) The total PTA under § 1.703(f) is projected to be 2542 days, which is the total PTA credit for PTO delay of 2945 days less the PTA debit for applicant delay of 403 days.
6. The following statements are required by 37 CFR § 1.705(b)(2)(ii).
- i) The relevant dates as specified in 37 CFR § 1.703(a)(1) for one part of the PTA credit are as follows: the date of August 8, 2002, which is the date that is fourteen months after the date on which the application was filed under 35 USC § 111(a); and the date of July 2, 2004, which is the mailing date of a notification under 35 USC § 121. Thus, the period for this delay runs from August 8, 2002 to July 2, 2004. This period of delay is 694 days. The next relevant date is March 1, 2005, which is the date that is four months after the date on which the applicant filed a reply under 35 USC 132; and the date of June 10, 2009, which is the mailing date of a notification under 35 USC 132. Thus, the period for this delay runs from March 1, 2005 to June 10, 2009. This period of delay is 1562 days. The next relevant date is June 26, 2010, which is the date that is four months after the date on which the applicant paid the Issue Fee under 35 USC 151; and the date of August 31, 2010, which is the date on which this application issued as a patent. Thus the period of delay runs from June 26, 2010 through August 31, 2010. This period of delay is 66 days. Thus, the total period

for delay under 37 CFR § 1.703(a)(1) is 2322 days (i.e., 694 days + 1562 days + 66 days).

- ii) The relevant dates as specified in 37 CFR § 1.703(b) for the other part of the PTA credit are as follows: the date of June 9, 2004 which is the date one day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a); and August 31, 2010, which is the Issue Date of this application. This period of delay is 2275 days.
- iii) The two periods given in paragraphs 6(i) and 6(ii) overlap for the following periods. The period from June 9, 2004 until the date of July 2, 2004. This period of this overlap is 24 days. And the period from March 1, 2005, until the date of June 10, 2009. This period of overlap is 1562 days. And the period from June 26, 2010 through August 31, 2010. This period of overlap is 66 days. Thus, the total reduction for overlap is 1652 days (i.e., 24 days + 1562 days + 66 days).

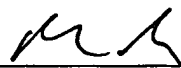
7. The following statements are required by 37 CFR § 1.705(b)(2)(iv)(A) and list circumstances during the prosecution of this application constituting a failure to engage in reasonable efforts to conclude processing or examination of the above-identified patent application as set forth in § 1.704.

- i) The Amendment and Response filed November 1, 2004 under 37 CFR § 1.111 was filed after the three month period for filing a response. Under § 1.704(b), the period of adjustment for delay associated with this reply begins on the day after the date that is three months after the date of mailing of the Office Action on July 2, 2004, and ends on the date the reply was filed. Thus, the period of delay runs from October 3, 2004 to November 1, 2004. This period of delay is 30 days.
- ii) The petition to withdraw the holding of abandonment filed on January 14, 2009, was filed after the two month period for requesting withdrawal of a holding of abandonment. Under § 1.704(b), the period of adjustment for delay associated with the petition begins on the day after the date that is two months after the date of mailing of the Notice of Abandonment and ending on the date a petition to withdraw the holding of abandonment was filed. Thus, this period of delay runs from April 14, 2008 and ends on January 14, 2009. This period of delay is 276 days.
- iii) The Amendment under 37 CFR § 1.312 filed on February 26, 2010, was filed after the Notice of Allowance. Under § 1.704(c)(10), the period of adjustment for delay associated with the petition begins on the date the amendment was filed and ends on the date that the Office issues a notice or response to the amendment. Thus, the period of delay runs from February 26, 2010 until June 2, 2010. This period of delay is 97 days.

8. Any patent granted on this application is not subject to a terminal disclaimer. See 37 CFR § 1.705(b)(2)(iii).

Respectfully submitted,

Date: 11/1/2010



Michael T. Morlock
Reg. No. 62,245

Encl. - Exhibit A - Copy of PTA History for Application No. 09/876,915 Printed from
PAIR November 1, 2010